

KENTUCKY APPELLATE PROCESS

The criminal appeals process consists of three stages: (1) the direct appeal; (2) collateral attacks; and (3) habeas corpus review. The first two stages take place in state court. The third stage takes place in federal court.

I. Direct Appeal.

A. Arrest, Indictment, Trial.

B. Appeal to Kentucky Court of Appeals or Kentucky Supreme Court.

1. Kentucky Constitution Section 115:

In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another, except that the commonwealth may not appeal from a judgment of acquittal in a criminal case, other than for the purpose of securing a certification of law, and the General Assembly may prescribe that there shall be no appeal from that portion of a judgment dissolving a marriage. Procedural rules shall provide for expeditious and inexpensive appeals. Appeals shall be upon the record and not by trial de novo.

2. Starting the appeal.

3. Length of sentence determines which Court hears the direct appeal:

- a. Sentences of less than 20 years go to the Kentucky Court of Appeals;
- b. Sentences of 20 years or more and all death sentences go to the Kentucky Supreme Court.
- c. This is mandated by Kentucky Constitution Section 110.

4. The Courts.

5. Record Transmitted.

6. Briefs are filed.

7. The Court reviews the case.

- a. oral argument is possible.
- b. opinion issued.
- c. losing party can file petition for rehearing.
- d. losing party in Court of Appeals can file motion for discretionary review.
- e. losing party can file petition for certiorari in U.S. Supreme Court.

II. Post-Conviction Attacks

These occur after the direct appeal has been finished. They basically consist of: (1) RCr 11.42 motions; (2) CR 60.02 motions; and (3) state habeas corpus petitions.

A. RCr 11.42 motion.

- a. Filed in circuit court where defendant originally convicted.
- b. Can be appealed similar to direct appeal.
- c. Purpose: to provide post-conviction relief to persons who feel aggrieved by errors in the process which led to their conviction and cannot be reached by direct appeal.

B. CR 60.02 motion.

- a. Also filed in circuit court where defendant originally convicted.
- b. Can be appealed similar to direct appeal.
- c. Purpose: allows the trial court an opportunity to revisit a case and correct any errors in the judgment which cannot otherwise be corrected or can only be corrected by facts arising after the entry of the judgment.

C. State Habeas petition.

- a. Filed in circuit court in the county in which the defendant is imprisoned.
- b. Can be appealed.
- c. Purpose: to determine whether the person detained is entitled to an immediate release from detention.

III. Federal Habeas Corpus

The Petitioner must allege that his state court conviction violates the United States Constitution. Governed by Title 28, United States Code Sec. 2254(d).

- a. Filed in federal district court.
- b. May be appealed to the Sixth Circuit Court of Appeals.
- c. Losing party may then file a petition for certiorari in United States Supreme Court.

IV. Office of Criminal Appeals

- A. The Kentucky Attorney General is the head of the Department of Law. KRS 15.10(1). This statute also mandates that the Department of Law shall include a "Criminal Appellate Division."
- B. KRS 15.020 mandates that the OAG represent the Commonwealth in Appellate Courts:

The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and . . . he shall appear for the Commonwealth in all cases in the Supreme court or Court of Appeals

wherein the Commonwealth is interested. . . .